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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Thomas Apple et al.
Serial No. : 08/736,143
Filed : October 28, 1996
Title : MEDIA WALL FOR DISPLAYING FINANCIAL INFORMATION

Art Unit : 2672
Examiner : Blackman, A.
Appeal No. 2003-0938

Board of Patent Appeals and Interferences
Commissioner of Patents and Trademarks
Washington, DC 20231

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REQUEST FOR RECONSIDERATION OF THE
DECISION ON APPEAL DATED DECEMBER 16, 2003

Sirs:

Appellants respectfully request reconsideration of the Board of Patent Appeals and Interferences Decision on Appeal dated December 16, 2003, Paper No. 37, under 37 CFR 1.197(b). Appellants believe the Board misapprehended or overlooked the following points in rendering their decision.

I. Appellants' invention

As stated in Appellants' opening brief, the inventors of the pending application conceived a new, more easily interpreted display for financial trading information. In particular, the inventors conceived using graphic symbols such as firm or corporate logos to replace traditional textual abbreviations as identifiers for a security's trading information in a financial display. Appellants' invention offers several non-obvious and important advantages over older styled displays, including reduced confusion amongst consumers observing the financial trading information and increased brand awareness by associating a firm or corporate logo with its financial information as it is being displayed on an exchange.

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II. The Board overlooked the absence of any motivation to combine the teachings of the cited prior art

Claims 4, 5, 17 through 31, 34, 37 and 38 stand rejected under 35 U.S.C. § 103 as being unpatentable over Higgins (U.S. 5,270,922), Lauer (U.S. 5,523,769) and Rayson (U.S. 5,761,689).

These rejections are improper because the Board has not made a *prima facie* case for obviousness. *See In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) ("There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from applicant's invention itself.")

The Board finds that: "Rayson teaches a method and a word processor system for automatically replacing one or more characters of text with corresponding bit map images." Decision page 21. In short order, it then concludes: "Thus, Rayson would have lead those skilled in the art to replace text with a logo." *Id.* This mere conclusion fails to address why one of skill in the art would have been motivation to combine the teachings in the prior art to arrive at Appellants invention, and thus the Board fails to make a *prima facie* case for obviousness. Neither Higgins, Rayson or Lauer, nor the Board, provide any motivation which would have lead one to combine the prior art to render Appellants invention obvious. The prior art also does not suggest that information can be displayed as a moving ticker in which a logo is juxtaposed with real-time financial data.

Obviousness is determined from the vantage point of hypothetical person having ordinary skill in the art to which the patent pertains. *See* 35 U.S.C. § 103(a). This legal construct presumes that all prior art references in the field of the invention are available to this hypothetical artisan. *See In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) *citations omitted*.

In order to rely on a reference as a basis for rejection, the reference must either be in the field of an applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *See In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

Here, the Board concedes, "Rayson is not in the field of stock ticker displays." Decision at 23. Rather, Rayson concerns the unrelated field of word processing. The Board's attempt to

rely upon Rayson to reject claims 4, 5, 17 through 31, 34, 37 and 38, without offering any explanation regarding why a person of skill in the field of displaying of financial information would have turned to a reference that is directed to improvement of word processing is improper. Such a combination of non-analogous art in a manner that attempts to reconstruct Appellants' invention with only the benefit of hindsight provided by Appellants is insufficient to present a *prima facie* case of obviousness. *See In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) ("There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from applicant's invention itself").

Moreover, even assuming the Rayson could have been properly considered by one of skill in the art, which Appellants do not concede, the Board fails to explain why that person would have been motivated to combine the teachings of Rayson, (i.e., a word processor auto correction tool) with Higgins (i.e., a traditional stock ticker display) to arrive at Appellants' invention. The examination of one's motivation to combine teachings in the prior art is especially important with regard to Appellants' invention.

As stated in Appellants' opening brief, for years traditional textual abbreviations for stock symbols and corporate logos have been used for different purposes by the public at large without combining their properties in a financial display as claimed. The absence of any art that combines their properties in the context of real-time financial data displays weighs strongly against a finding that their combination is obvious. *See Arkie Lures, Inc., v. Gene Larew Tackle, Inc.*, 119 F.3d 953,958 (Fed. Cir. 1997) (reversing a district court decision where "years of use of salty bait and of plastic lures, without combining their properties, weight on the side of the unobvious combination.")

Yet, despite notice of this requirement in Appellants' brief, the Board does not offer any motivational basis to support its decision to combine Rayson with Higgins and Lauer. With respect to this proposed combination the Board merely states:

We find that Rayson teaches a method and word processor system for automatically replacing on or more characters of text entered by the user in a word processing document with corresponding bit map images. Rayson further teaches that this facility give the user a relatively easy way to automatically enter such object into a document or desire, by simply

typing the characters corresponding object that is to replace those characters. Thus, Rayson would have lead [sic] those skilled in the art to replace text with a logo.

We find that Rayson would reasonably suggest to one of ordinary skill in the art that the identifiers in Higgins could be replaced with a graphic logo, even though Rayson is not in the filed of stock ticker displays.

Decision at 21, *citations omitted*.

Such conclusory statements concern Rayson fail to justify why one of ordinary skill in the art would have been motivated -- absent hindsight -- to combine the teachings of the Higgins, Lauer and Rayson to arrive at Appellants' invention. Accordingly, the Boards decision falls short by failing to demonstrate a *prima facie* case for obviousness with respect to Appellants invention as recited in claims 4, 5, 17 through 31, 34, 37 and 38. *See In Re Kotzab*, 217, F.3d 1365, 1371 (Fed. Cir. 2000) ("In light of our holding of the absence of a motivation to combine the teachings in [the prior art], we conclude that the Board did not make out a proper *prima facie* case of obviousness").

III. Even assuming motivation to combine, the prior art still does not disclose, teach or otherwise suggest associating a firm or corporate logo with financial information received from a stock ticker feed in an electronic display

Claims 4, 5, 17 through 31, 34, 37 and 38 stand rejected under 35 U.S.C. § 103 as being unpatentable over Higgins (U.S. 5,270,922), Lauer (U.S. 5,523,769) and Rayson (U.S. 5,761,689).

These rejections are improper since Higgins, Lauer and Rayson do not disclose, teach or otherwise suggest associating a firm or corporate logo with financial information received from a stock ticker feed as recited by these claims.

For example, independent claim 17 is directed to a system for displaying stock ticker information. The system includes a display and an electronic device which produces a signal that when fed to the display scrolls market data across it. The market data includes "a corporate logo juxtaposed with financial information." The financial information includes "real-time textual data associated with financial instruments of entities identified by instrument identifiers in a feed received by the system."

Higgins, the closest prior art to Appellant's invention, does not teach or suggest (in the words of claim 17) "a company logo juxtaposed with financial information." Rather, it discloses a traditional stock ticker display. Specifically, Fig. 2 (reproduced below) shows a display 107 having a first field 142 "which comprises the complete New York Stock Exchange ticker (a

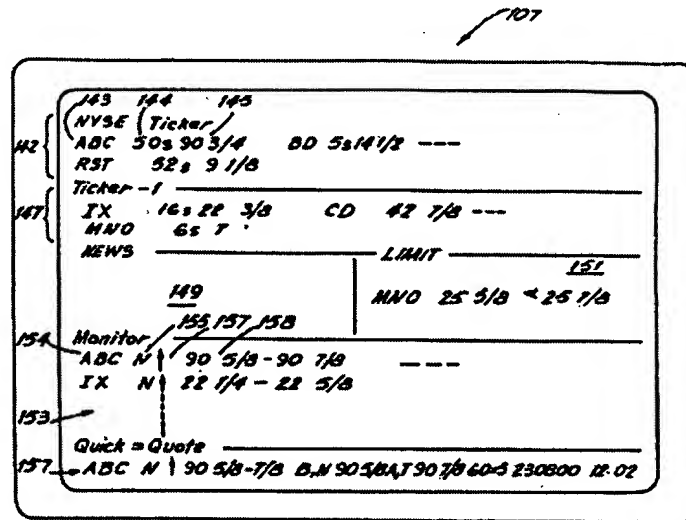


FIG. 2

series of stock transaction messages for stock executions on that exchange)."

"The field [142] includes a sequence of messages each formed of a stock symbol 143 followed by the volume (in hundreds of shares) 144 and the trade price 145." Higgins at col. 4, lines 45-50.

Stock symbols 143 (here companies ABC, BD and RST) are in the traditional textual abbreviation format. One viewing them does not view a firm or corporate logo juxtaposed with real-time financial information. For example, viewers see only the textual abbreviation for Amerisource Bergen Company's stock ticker symbol (i.e., ABC) and not its firm or company logo, which is reproduced below.



Nowhere does Higgins disclose, teach or otherwise suggest replacing the traditional use of textual abbreviation for stock symbols 143 (e.g., ABC) with Appellants' firm or company logos (e.g., shown above). Lauer and Rayson are even less relevant to Appellants' invention.

Lauer concerns active modules for large screen displays and concerns utilizing an array of active display modules. Each module is provided a processing unit to permit rapid painting and updating of the display regardless of display size or pixel density. Lauer at col. 1, lines 9-14. Lauer does not disclose, teach or suggest associating a firm or corporate logo with financial information. It does not even discuss displaying financial information, nor does it even suggest (in the words of claim 17) "a company logo juxtaposed with financial information."

While Rayson may be extended to "replace predefined text or a character string with graphic objects such as pictures or logos," Rayson at col. 9, lines 50-65, Rayson does not disclose, teach or suggest associating a firm or corporate logo with financial information received from a stock ticker feed. Rayson also does not teach, disclose or suggest (in the words of claim 17) "a company logo juxtaposed with financial information." Indeed, the Board concedes, "Rayson is not in the field of stock ticker displays." Decision on Appeal at p. 23.

Rayson concerns an invention that automatically corrects text typed into a word processing document. The method begins with the step of enabling a user to indicate an entry that will be automatically replaced and storing that indication. The user may then identify the replacement that will automatically replace the entry so that the identification of the replacement is stored in relationship to the entry. Characters entered by the user are scanned to detect if the user has entered the characters comprising the entry and to determine if a delimiter character was entered after the characters comprising the entry. The entry is automatically replaced with the replacement. Rayson at col. 2, lines 10-25.

Were one of skill in the art to combine the teachings of Rayson and Higgins, one would not arrive at Appellants' invention. Rather, Rayson would provide an auto-correct facility for error in entry for the convention stock ticker symbols. Moreover, Rayson lacks any specific reference to firm or corporate logos, financial information or stock ticker feeds, and certainly does not teach, disclose or suggest (in the words of claim 17) "a company logo juxtaposed with financial information."

Independent claim 27 and dependent claims 4, 5, 18 through 31, 34, 37 and 38 are each patentable over the prior art for at least these same reasons. For example, claim 4 recites, "graphic symbols include corporate logos for companies issuing the stocks" and claim 5 recites, "the video wall displays a moving ticker display of corporate logos and values of trades in stocks." Thus, both claims 4 and 5 associate a corporate logo with financial information received from a stock ticker feed in an electronic display, which is not taught by the prior art. Similarly, independent claim 27 includes "displaying market data across an electronic monitor," where the market data includes "a company logo and stock ticker real-time textual data associated with the company logo, the real-time textual data juxtaposed with the company logo." Again claim 27, and all claim that depend from it (e.g., 28 through 31 and 38) are patentable over the prior art because it fails to disclose, teach or suggest associating a corporate logo with financial information received from a stock ticker feed as recited by these claims. Likewise, claim 34 includes "correlating a bitmap of a company logo with financial information contained in a database" and is likewise allowable over the prior art.

IV. The Board overlooks Appellants' disclaimer of traditional stock ticker symbols as encompassed in the term "graphic symbol"

The Board cites the IBM Dictionary of Computing for a definition of the term "graphic symbol." The term "graphic symbol" as used by Appellants in claims 1 to 3, 6 to 16, 32 to 33 and 35 to 36 does not read upon the traditional use of textual abbreviations for stock ticker symbols present in Higgins. The Board cites *Texas Digital System Inc v. Telgenix, Inc.*, 308 F.3d 1193, (Fed. Cir. 2002) for the proposition that terms used in the claims bear a heavy presumption that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art. However, *Texas Digital Systems* also states: "Moreover the intrinsic record must be examined in every case to determine whether the presumption or ordinary and customary meaning is rebutted." *Citation omitted*. "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." *Texas Digital Systems Inc V. Telgenix, Inc.*, 308 F.3d at 1204, *citation omitted*.

The Board overlooks that Appellants' specification disclaims the ordinary meaning of the term graphic symbol. As stated in the Background of the Invention section:

[t]his invention relates generally to the display of financial information using graphic symbols. More specifically, the invention relates to the use of firm or corporate logos *instead of textual abbreviations* to identify securities information in a ticker-type format or in the display of other trading information.

Appellants Application at p. 1, *emphasis added*.

Thus, Appellants have chosen to be their own lexicographer by expressly stating that the term graphic symbol does not cover traditional textual abbreviations previously used as stock symbols in financial displays. See *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370 (1996) ("As we have often stated, a patentee is free to be his own lexicographer..."). Since Higgins only discloses the use of traditional stock symbols (i.e., textual abbreviations, which have been disclaimed by Appellants), it does not anticipate claims 32, 33, 35 or 36 and does not render claims 1 to 3, or 6 to 16 unpatentable.

V. Conclusion

Reconsideration and modification of the Board's December 16, 2003 decision is requested. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

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